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 2 Gennady L. Lebedev, Esq., SBN 179945  
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 5 e-mail: [glebedev@bleaufox.com](mailto:glebedev@bleaufox.com)

6 Attorneys for Plaintiff,  
 HOUTAN PETROLEUM, INC.

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 HOUTAN PETROLEUM, INC.

11 Plaintiff,

12 vs.

13 CONOCOPHILLIPS COMPANY, a Texas  
 Corporation and DOES 1 through 10,  
 14 Inclusive

15 Defendants.

) CASE NO. 07-cv-5627 SC

) **DECLARATION OF GENNADY L.**  
 ) **LEBEDEV IN SUPPORT OF**  
 ) **PLAINTFF/CROSS-DEFENDANT, HOUTAN**  
 ) **PETROLEUM, INC.'S, OBJECTION AND**  
 ) **MOTION TO STRIKE DEFENDANT/CROSS-**  
 ) **COMPLAINANT, CONCOPHILLIPS**  
 ) **COMPANY'S WITNESSES AT TRIAL**

) Date: February 6, 2008

) Time: 10:00 a.m.

) Courtroom: 1

) Before: Hon. Samuel Conti

) Trial Date: February 11, 2008

) **Accompanying Document:**

) **Objection and Notice of Motion and Motion to**  
 ) **Strike ConocoPhillips Company's Witnesses at**  
 ) **Trial**

22 I, Gennady L. Lebedev, declare as follows:

23 1. That I am an attorney duly licensed to practice law before all courts of the State of  
 24 California and the Northern District of California and am an associate with the law firm of Bleau /  
 25 Fox, A P.L.C., counsel of record for Plaintiff in this action, Houtan Petroleum, Inc.. That if called  
 26 upon to testify, I could and would do so competently based upon my personal knowledge of the facts  
 27 as stated herein.

28 2. Due to the condensed schedule arising out of the trial set by this Court for February

1 11, 2008, counsel for ConocoPhillips, Adam Friedenber, requested for the parties to stipulate that  
2 initial disclosures and expert witness disclosures and reports be due on January 28, 2008, and that "a  
3 complete appraisal report shall be sufficient to satisfy the requirements of Rule 26(a)(2)(B)(i)-(iii)."

4 Attached hereto as **Exhibit "A"** is a true and correct copy of Mr. Friedenber's e-mail so indicating.

5 3. I agreed on behalf of Houtan Petroleum, Inc. to ConocoPhillips' proposal. A true and  
6 correct copy of the e-mail exchange responding to Mr. Friedenber's proposal, confirming this  
7 agreement between the parties is attached hereto as **Exhibit "B."**

8 4. On January 28, 2008, ConocoPhillips served its initial disclosures and expert witness  
9 designation. A true and correct copy of Mr. Friedenber's e-mail message that had such documents  
10 attached is attached hereto as **Exhibit "C."**

11 5. Attached hereto as **Exhibit "D"** is a true and correct copy of ConocoPhillips' initial  
12 Rule 26 disclosures that were attached to Mr. Friedenber's e-mail of January 28, 2008, without  
13 accompanying documents.

14 6. Attached hereto as **Exhibit "E"** is a true and correct copy of ConocoPhillips' expert  
15 witness designation that was attached to Mr. Friedenber's e-mail of January 28, 2008, with all  
16 attached exhibits.

17 7. Upon review of ConocoPhillips' expert designation, I noticed that ConocoPhillips had  
18 failed to produce the complete appraisal of the equipment and improvements at the subject station  
19 property. Rather, it merely reattached a one page summary (as Exhibit B to the expert designation)  
20 that was previously included as an exhibit to various pleadings already on file with this Court.

21 8. That same evening, I e-mailed Mr. Friedenber inquiring why the full report was not  
22 included with the disclosures. Mr. Friedenber responded that he was out of the office at the time,  
23 but would look into it on the next day. A true and correct copy of this e-mail exchange with Mr.  
24 Friedenber is attached hereto as **Exhibit "F."**

25 9. Not having received any response, I e-mailed Mr. Friedenber again on January 30,  
26 2008, again inquiring about the excluded appraisal report. Mr. Friedenber responded that he would  
27 produce a copy of "the complete appraisal report soon as possible," hopefully on the next day.  
28 Additionally, Mr. Friedenber indicated in the same e-mail that ConocoPhillips would be adding two



1 additional witnesses to its disclosures, "1) Sandy Matthews, who is a ConocoPhillips employee, as  
2 a fact witness, and 2) Robert W. Wintz of Valuation Research Corporation, who will testify as an  
3 expert witness." Attached hereto as **Exhibit "G"** is a true and correct copy of this e-mail exchange  
4 with Mr. Friedenbergr.

5 10. It should be noted that on January 28, 2008, I did timely serve on Mr. Friedenbergr as  
6 counsel for ConocoPhillips, Houtan Petroleum, Inc.'s initial disclosures and expert witness  
7 designations, along with a complete appraisal report from Andrew C. Plaine, MAI, as previously  
8 agreed between counsel. Additionally, ConocoPhillips has already taken the deposition of Houtan  
9 Petroleum's expert, Andrew C. Plaine on January 31, 2008.

10 11. With the trial date fast approaching, Houtan Petroleum has been severely prejudiced  
11 by ConocoPhillips' failure to comply with the witness disclosure requirements and the stipulation  
12 between counsel for the parties. Consequently, the Court should strike ConocoPhillips' expert  
13 witness designations as to Peter Morrison and Robert W. Wintz, as well as fact witness Sandy  
14 Matthews, and preclude ConocoPhillips from presenting testimony from any expert witnesses at trial.

15 12. Other than the one page summary attached to its expert witness designation, as of the  
16 time of this Declaration, ConocoPhillips has yet to produce a complete appraisal report or any expert  
17 witness report from either Mr. Morrison or Mr. Wintz.

18 I declare under penalty of perjury under the laws of the United States of America that the  
19 foregoing is true and correct.

20 Executed this 31<sup>st</sup> day of February, 2008 in Los Angeles, California.

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Gennady L. Lebedev  
23  
24  
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27  
28

**EXHIBIT “A”**

## Gennady

---

**From:** Adam Friedenberg [afriedenberg@glynnfinley.com]  
**Sent:** Wednesday, January 23, 2008 10:24 AM  
**To:** glebedev@bleaufox.com  
**Subject:** RE: Houtan

Gennady:

We have De Anza under subpoena for the morning of January 31, so let's set Plaine for the afternoon of January 31. Please let me know if you will produce Plaine by stipulation, and produce the documents identified in our subpoenas, so that we need not reserve a subpoena. We will re-notice Ed Haddad for January 30.

Regarding disclosures, I would propose that we make the following disclosures, by fax or email, on January 28:

- 1) Initial disclosures pursuant to Rule 26(a)(1), but with respect to documents both parties would produce, and not merely describe, the documents required by Rule 26(a)(1)(B); and
- 2) Expert disclosures and reports, subject to the understanding that as to appraiser-experts, a complete appraisal report shall be sufficient to satisfy the requirements of Rule 26(a)(2)(B)(i)-(iii).

Please confirm that this is agreeable.

Thank you.

Adam

---

**From:** Gennady [mailto:glebedev@bleaufox.com]  
**Sent:** Tuesday, January 22, 2008 8:30 PM  
**To:** Adam Friedenberg  
**Subject:** RE: Houtan

Adam:

Andrew Plaine is available on the 31st. So, let's continue his depo. for the 31st, either morning or afternoon and let's set Ed Haddad's depo for the 30th. Let me know about the landlord's depo. on the 31st. Plaine is flexible for afternoon or morning, so we can work around the landlord.

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**From:** Adam Friedenberg [mailto:afriedenberg@glynnfinley.com]  
**Sent:** Tuesday, January 22, 2008 2:21 PM  
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I don't know if Vidovich is confirmed, but we plan to serve De Anza with a 30(b)(6) subpoena which may obviate personal service on Vidovich anyhow. I believe we noticed De Anza for January 31. I can't do the 29th, but I am willing to try to work with you re scheduling. Perhaps we could do Mr. Haddad on January 30 and Vidovich/De Anza on January 31. Andrew Plaine would still go forward this Friday as scheduled. Let me know.

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**From:** Gennady [mailto:glebedev@bleaufox.com]  
**Sent:** Tuesday, January 22, 2008 12:57 PM  
**To:** Adam Friedenberg  
**Subject:** RE: Houtan

1/31/2008



Adam:

Please let me know the status of the Vidovich depo. Is it confirmed for January 30? If so, we would like to move Ed Haddad's deposition to January 29, instead of 28.

Also, what is your response to our proposal of doing simultaneous Rule 26 initial disclosures and expert designations on 1/28?

Thanks,

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**From:** Adam Friedenberg [mailto:afriedenberg@glynnfinley.com]  
**Sent:** Monday, January 21, 2008 4:06 PM  
**To:** glebedev@bleaufox.com  
**Subject:** Houtan

Gennady, we served the attached notices today by fax and mail. Given the timing, I wanted to be sure to get you copies as quickly and directly as possible. Relatedly, we have served Andrew Plaine with a subpoena, and his deposition will proceed at our offices on Friday January 25, as noticed. We have not yet served John Vidovich, so his deposition will not proceed on January 24. We have served the records custodians for De Anza/V.O. Limited for the times indicated in the notices and subpoenas you have received last week. In addition, we plan to notice and subpoena Mr. Vidovich and the 30(b)(6) witness(es) for De Anza and V.O. Limited for January 30 at our offices.

Adam

Adam Friedenberg  
Glynn & Finley, LLP  
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Walnut Creek, CA 94596  
(925) 210-2809  
(925) 945-1975 (fax)  
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[afriedenberg@glynnfinley.com](mailto:afriedenberg@glynnfinley.com)

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1/31/2008

immediately by telephone at (925) 210-2800.

**EXHIBIT “B”**



## Gennady

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**Sent:** Wednesday, January 23, 2008 2:50 PM  
**To:** glebedev@bleaufox.com  
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[ That's fine. ]

1:30 for Plaine should work.

---

**From:** Gennady [mailto:glebedev@bleaufox.com]  
**Sent:** Wednesday, January 23, 2008 2:49 PM  
**To:** Adam Friedenber  
**Subject:** RE: Houtan

[ We're agreeable to everything, except the point about producing documents by fax or e-mail. Can we agree to produce only those documents that have not been attached to any of the pleadings/motions that have already been filed with the Court? Also, let me know the time you would like Plaine at your office. ]

Gennady L. Lebedev  
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